



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-04-82-A
Date: 22 October 2008
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Andréia Vaz
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr Hans Holthuis

Decision of: 22 October 2008

PROSECUTOR
v.
LJUBE BOŠKOSKI
JOHAN TARČULOVSKI
PUBLIC

**DECISION ON JOHAN TARČULOVSKI'S SECOND MOTION
FOR EXTENSION OF TIME TO FILE APPEAL BRIEF**

The Office of the Prosecutor:

Mr Paul Rogers

Counsel for Joahn Tarčulovski:

Mr Alan M. Dershowitz
Mr Nathan Z. Dershowitz
Mr Antonio Apostolski

Counsel for Ljube Boškosi:

Ms Edina Rešidović
Mr Guénaél Mettraux

The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively);

BEING SEIZED of the “Motion of Alan M. Dershowitz, as Appellate Counsel for Tarčulovski, for Extension of Time to File the Appellant Brief” (“Motion”), filed on 20 October 2008 by Counsel for Johan Tarčulovski (“Tarčulovski”);

NOTING that, pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), an Appellant’s brief shall be filed within 75 days of filing the notice of appeal;

NOTING the decision of the Duty Judge on 5 August 2008, denying the motion for extension of time to file the notice of appeal;¹

NOTING therefore that, according to the Rules, the deadline to file the Appellant’s brief of Tarčulovski (“Appeal Brief”) would expire on 23 October 2008;

NOTING that the “Tarčulovski Motion for Extension of Time to File the Appellant Brief” filed on 1 October 2008, in which Tarčulovski sought an extension of time to file his Appeal Brief within 75 days of receipt of the translation of the Trial Judgement, was denied by the Pre-Appeal Judge on 16 October 2008;²

NOTING that according to Rules 127(A)(i) and (B) of the Rules, the Appeals Chamber may, on good cause being shown, “enlarge or reduce any time prescribed by or under these Rules”;

NOTING that the Motion requests an extension of time until 15 February 2008 because, given his “principal responsibility for the appeal”, newly appointed Counsel needs to be able to review the extensive record on appeal,³ has only recently received part of the record on appeal,⁴ and has not yet been able to confer with previous Lead Counsel;⁵

¹ Decision on Johan Tarčulovski Motion for Extension of Time to File the Notice of Appeal, 5 August 2008.

² Decision on Johan Tarčulovski Motion for Extension of Time to File Appeal Brief, 16 October 2008 (“Decision on First Request for Extension of Time”).

³ Motion, paras 3-4 and 10.

⁴ Motion, para. 7.

⁵ Motion, para. 9.

NOTING that newly appointed Counsel further argues that, after having begun reading portions of the material, the deadline of 23 October would not allow him to properly review the record and prepare the Appeal Brief and would therefore result in “extreme” unfairness;⁶

NOTING that newly appointed Lead Counsel also states that, even if an amendment or supplement to the Appeal Brief was later allowed, this would not address the fact that, in the present circumstances, he would not be able to decide “what issues should or must be raised” in the Appeal Brief and that the result would in effect be that two Appeal Briefs would have to be filed;⁷

NOTING that, on 21 October 2008, the Office of the Prosecutor (“Prosecution”) filed its “Prosecution Response to Motion of Alan M. Dershowitz, as Appellate Counsel for Tarčulovski, for Extension of Time to File the Appellant Brief” (“Response”);

NOTING that the Prosecution, while recognizing that any extension of time lies within the discretion of the Appeals Chamber,⁸ submits that the case-law of the Tribunal does not support the conclusion that the restructuring of the Defence team, the magnitude of the record, or the need to “trawl through the record” constitute good cause for an extension of the briefing schedule;⁹

NOTING that the Prosecution further submits that, when extensions of time to file an Appellant Brief have been allowed in similar circumstances in the past, such extensions were limited in time and that, in the present case, the time allotted is sufficient;¹⁰

CONSIDERING that the Tribunal’s deadlines for the filing of briefs pursuant to Rule 111(A) of the Rules are essential to ensure the expeditious preparation of the case;

NOTING that the Decision on First Request for Extension of Time denied the extension because the restructuring of the Defence team did not amount to good cause pursuant to Rule 127 of the Rules and because Tarčulovski had not shown good cause to postpone the filing of the Appeal Brief 75 days after the filing of the Macedonian translation of the Trial Judgement;¹¹

⁶ Motion, paras 8 and 14.

⁷ Motion, para. 12.

⁸ Response, para. 1.

⁹ Response, para. 2.

¹⁰ Response, paras 3-4.

¹¹ Decision on First Request for Extension of Time, p. 2.

CONSIDERING that, in light of the representations from the parties, Tarčulovski would indeed suffer prejudice from an Appeal Brief filed by Counsel unfamiliar with the record;

CONSIDERING further that neither the interests of justice nor the interest in judicial economy would be served by having effectively two separate Appeal Briefs in this case (one by former Lead Counsel on 23 October 2008 and one by the newly appointed Defence Team at a later stage) or by forcing new Counsel to argue the case on appeal on the basis of an Appeal Brief prepared by former Lead Counsel;

CONSIDERING therefore that, taking into account the situation as a whole, good cause pursuant to Rule 127 of the Rules has been shown in the circumstances of this case;

NOTING however that the Appellant's Defence team is composed of three attorneys and that one of them is former lead Counsel;¹²

NOTING that former Lead Counsel remains on the case for purposes of continuity and consultation;¹³

NOTING that the new Lead Counsel hopes to be able to meet with Tarčulovski in early November 2008;¹⁴

CONSIDERING therefore that the deadline for filing the Appeal Brief in this case should be aimed at preventing prejudice to Tarčulovski, taking account of the fact that new Counsel for the Appellant were appointed as of 10 October 2008 and that the Macedonian translation of the Trial Judgement should be ready by 1 December 2008;¹⁵

FOR THE FOREGOING REASONS

HEREBY GRANTS the Motion in part;

ORDERS that the Appeal Brief be filed by 12 January 2009.

¹² Decision [by the Deputy Registrar], 10 October 2008, p. 2.

¹³ Motion, para. 3.

¹⁴ Motion, para. 9.

¹⁵ Tarčulovski Motion for Extension of Time to File the Appellant Brief, 1 October 2008, para. 5.

Done in English and French, the English text being authoritative.

Dated this 22nd day of October 2008
At The Hague
The Netherlands



Judge Fausto Pocar
Presiding

[Seal of the Tribunal]